

N.D.A.G. Letter to Lamb (April 23, 1986)

April 23, 1986

Mr. Joseph S. Lamb
Executive Vice President
Chief Operating Officer
Bank of North Dakota
700 East Main
P.O. Box 5509
Bismarck, ND 58502-5509

Dear Mr. Lamb:

Thank you for your letter of February 27, 1986, listing three questions of the Bank of North Dakota concerning my memorandum of November 25, 1985. My memorandum recommended the adoption of a policy with respect to the closed portions of agendas of the Industrial Commission in which it customarily discusses customer loans by the Bank of North Dakota.

Your first question is whether the disclosure of information described in my memorandum is authorized by any statute of the state of North Dakota. As a matter of fact, such a disclosure at a meeting of a public or governmental body is required by N.D. Const. Art. XI, 5 as well as N.D.C.C. § 44-04-19. As I have indicated in my memorandum, my recommendation of this particular policy is a result of the reconciliation of the competing requirements of N.D.C.C. §6-08.1-01(2) as well as the constitutional and statutory provisions of the open meetings law. The attempt to reconcile these two conflicting statutes so as to give effect to both provisions is mandated by N.D.C.C. § 1-02-07.

Your second question inquires as to personal liability for Bank of North Dakota officers, agents, or employees in disclosing financial information pursuant to the policy I have outlined. Naturally, the possibility of a lawsuit against public officials performing their duties and responsibilities is always present. However, there are two North Dakota cases indicating that public officials who follow the opinion of the Attorney General will be protected from liability by such action even where the opinion is later held to be erroneous. These cases further state that public officials who do not follow the opinion of the Attorney General "will be derelict to their duty and act at their peril." Haugland v. Meier, 339 N.W.2d 100, 106 n.6 (N.D. 1983); State v. Baker, 21 N.W.2d 355, 363 (N.D. 1945).

These Supreme Court cases provide protection to public officials and employees from liability where they act in good faith reliance upon an Attorney General's opinion.

Your third and last question concerns the availability of state indemnification for employees who have been the subject of a judgment in a personal liability lawsuit for

actions taken as part of their employment. I will be addressing this issue in a separate letter which you will receive at a later date.

Sincerely,

Nicholas J. Spaeth

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